THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20639 OF 2006

DATED 29th SEPTEMBER, 2006

BETWEEN

M/s.Annaurna Industries

… Petitioner

and

The General Manager (Projects), A.P.State Finance Corporation, Chirag Ali Lane, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20639 OF 2006

ORDER:

The petitioner is a firm running a rice mill at Vattimarthi village o f Chityal Mandal in Nalgonda District. The firm availed loan of Rs.6,59,000/- from A.P.State Finance Corporation (APSFC), Nalgonda Branch. The loan was sanctioned on 31.10.1990. The petitioner allegedly paid repayment instalments regularly. There was, however, default in clearing the loan. APSFC therefore invoked their powers under Section 29 of State Financial Corporations Act, 1958 (the Act, for brevity), seize the unit and put it to sale. When the sale is about to be confirmed in favour of the highest bidder, the petitioner filed the present writ petition seeking a writ of Mandamus declaring the action of the APSFC, Nalgonda, in going to confirm the sale of the petitioner firm under Section 29 of the Act is illegal and arbitrary. Consequential direction is also sought to respondents not to finalise the sale proceedings.

Learned counsel for the petitioner contends that the petitioner was not given any notice demanding the payment of the amount or notice of recall of the loan and therefore, the seizure and sale of the petitioner firm is arbitrary and illegal. Secondly, relying on the decision of the Supreme Court in **Mahesh Chandra v Regional Manager, U.P.Financial Corporation**[1], he submits that the duty is cast on the APSFC to explore the ways and means of making the industry viable and without doing the same, the sale conducted by the respondents is illegal. Having regard to the submission of the learned counsel for the petitioner that no notice was issued to the petitioner, this Court directed the learned standing counsel for APSFC to get instructions in the matter. After getting instructions, learned standing counsel submits that the sale-cum-recall notice was issued on 15.06.2006 and the petitioner did not respond to the same. Therefore, the sale was advertised on 03.08.2006 calling for tenders when the APSFC received the highest bid at Rs.20,10,000/-. At that stage, the petitioner approached the third respondent and sought seven days time to pay the entire loan amount of Rs.8, 79,000/- as at 30.01.2006 and

therefore, the third respondent issued notice, dated 25.09.2006 keeping the sale of land and building/machinery of the petitioner in abeyance for seven days and also informing all concerned that the tenders will not be entertained till 03.10.2006.

The petitioner has filed the notice issued by the third respondent on 25.09.2006 to the effect that the sale has been kept in abeyance. This would certainly problablises the contention of the learned standing counsel for APSFC. Having approached the APSFC seeking time for payment, the petitioner filed the present writ petition without disclosing the same. Learned counsel for the petitioner sought to contend that the calculation of amount duly imposing heavy interest is illegal. Such a ground cannot be allowed at this stage. Reliance placed by the learned counsel on the decision of the Supreme Court in **Mahesh Chandra** (supra) is also not proper. The said decision has been subsequently overruled by the Supreme Court in **Jagdamba Oil Mills v Haryana Financial Corporation**[2]**,** wherein it was laid down as under.

> The fairness required of the Corporations cannot be carried to the extent of disabling them from recovering what is due to them. The matter can be looked at from another angle. The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such in the discharge of its functions, it is free to act according to its own light. The views it forms and decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. As was observed by this Court in *U.P. Financial Corpn.* v. *Naini Oxygen & Acetylene Gas Ltd.*[3] in commercial matters the courts should not risk their judgments for the judgments of the bodies to whom that task is assigned. As was rightly observed by this Court in *Karnataka State Financial Corpn.* v. *Micro Cast Rubber & Allied Products (P) Ltd.*[4] in the matter of action by the Corporation in exercise of the powers conferred on it under Section 29 of the Act, the scope of judicial review is confined to two circumstances i.e. (*a*) where there is statutory violation on the part of State Financial Corporation, or (*b*) where State Financial Corporation acts unfairly i.e. unreasonably. While exercising its jurisdiction under Article 226 of the Constitution of India, 1950 (in short "the Constitution"), the High Court does not sit as an Appellate Authority over the acts and deeds of the Corporation. Similarly, the courts other than the High Courts are not to interfere with action under Section 29 of the Act unless the aforesaid two situations exist.

The petitioner has approached this Court without disclosing the true facts and therefore, the same cannot be entertained. Further, the petitioner has already approached the third respondent for settlement and therefore, he has to seek redressal before the financial institution and not in a writ petition under Article 226 of Constitution of India.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

29.09.2006.
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[1] AIR 1993 SC 935

[2] (2002) 3 SCC 496 = AIR 2002 SC 834

[3] (1995) 2 SCC 754

[4] (1996) 5 SCC 65 = JT (1996) 6 SC 37